IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Crl.Rev.Pet.No. 949 of 1999(B)

CRA.301/1997 of ADDL. SESSIONS COURT, THRISSUR
SC.12/1995 of ASSISTANT SESSIONS COURT, IRINJALAKUDA

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REVN. PETITIONER/APPELLANT/ACCUSED:

JOSEPH,
S/O.KANNANKUNNI LONAKUNNI,
KAROOR DESOM,
KODAKARA VILLAGE.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED
BY PUBLIC PROSECUTOR, HIGH
COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P. NO.4386 OF 1999 IN CRL.R.P. NO.949 OF 1999

CLOSED.

SD/-
8/8/07. K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

JP

K.R.UDAYABHANU, J

Crl.R.P.No.949 of 1999

Dated this the 8th day of August, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 307 IPC and Section 3 read with Section 25(1) (a) of Arms Act, 1959 and sentenced to undergo R.I. for a period of 7 years for the offence under Section 307 IPC and to undergo R.I. for three years for the offence under Section 3 read with Section 25(1)(a) of the Arms Act with the direction that the sentences shall run concurrently.

2. The prosecution case is that on 16.1.1993, at about 7.45 a.m., PW1, the victim along with the Excise party consisting of PWs' 2 and 3 went near the place of the alleged sale of illicit arrack i.e., at Karoor in jeep and the jeep was stopped there. They sighted the accused standing at the top of the quarry carrying a can and a glass and that PWs' 1 to 3 ran towards him and that the accused attempted to ran away. PWs' 1 to 3 followed him and when the accused reached the paddy field of

one Pisharadi, the accused turned back and took out a revolver and threatened PWs' 1 to 3, and also took a few steps forward aiming the revolver and tired the revolver and the shot hit PW1 who sustained very serious injury and also underwent emergency surgeries.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 16, Exts. P1 to P12(c) and Mos' 1 to 5.

4. The version of the accused is one of total denial and that PWs' 1 to 3 have foisted a fabricated case.

5. The testimony of PWs' 1 to 3 constituted the direct evidence as to the incident. PWs' 4, 5 and 13, the doctors, who attended PW1 and performed the surgery has testified with respect to the injury including internal injuries of the intestines sustained. PW15, the ballistic expert, at the FSL has proved Ext. P9 report issued by him after examining MO2 revolver. It is found that the evidence of PW1 as to the incident is specific and credible and that the evidence of PWs' 2 and 3 confirmed the version of PW1. No contradictions or omissions with respect to the previous statement of the above witnesses were brought out

in the cross examination. It is contended by the counsel for the revision petitioner that PW1 has stated in the FI statement that he is previously acquainted with the accused and that he has stated that he has no familiarity with the accused and that PWs' 2 and 3, the Abkari officials, have stated that the accused is familiar to them as involved in Abkari cases, but they failed to mention any crime number against the accused and that PW15, the ballistic expert has not stated that MO3 used bullet is the one that was used in MO2 revolver and that the evidence of PW1 that two others were standing about 5 feet away from A1 at the time when he sighted him and that PWs' 2 and 3 has stated that they have not noticed others and that no persons were residing near to the scene of occurrence were examined and that Section 27 recovery was not relied on by the court below. I find that the matters alleged are not directly relevant and rather inconsequential considering the fact that PWs' 1 to 3 have rendered direct evidence as to the incident and the medical evidence clearly indicated that PW1 has sustained gun shot injuries. I find that although Section 27 is not attracted with

respect to the recovery of the revolver the conduct of the accused is relevant under Section 8 of the Abkari Act. PW15, the ballistic expert has deposed that the MO1 shirt of PW1 which was seized under Ext. P5 seizure mahazar, contained a perforation and the edges of the hole was stained with lead particles. In the light of the above findings of the court below that the prosecution has established the allegations beyond reasonable doubt is only to be sustained. In the result, the conviction is confirmed.

6. The counsel for the revision petitioner has pleaded for leniency in sentence pointing out that the incident has taken place in January 1993 and that more than 15 years have elapsed since the date of the incident and that so far the accused has been facing the ordeal of criminal proceedings and living under the shadow of impending imprisonment.

7. In the circumstances, the sentence imposed for the offence under Section 307 IPC is modified to undergo R.I. for six months and to pay a compensation of Rs.75,000/- to PW1 and in default, to undergo R.I. for six months. He is also sentenced to undergo R.I. for six months under Section 3 read with Section 25

(1)(a) of the Arms Act. The sentences shall run concurrently. He will be entitled to set off for the period of pretrial detention undergone.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl

K.R.UDAYABHANU, J

Crl.R.P.No.406/1997

ORDER

7th August 2007